

SENATE BILL 3570
By Person, Curtis

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 33; Title 68 and Title 71, relative to services
for persons with certain brain injuries.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 55, is amended by adding
the following as a new part 5:

68-55-501. The commissioner of finance and administration in consultation with
the commissioner of health, and the traumatic brain injury advisory council shall develop
a proposal for an appropriate federal waiver from the department of health and human
services to provide medical assistance to eligible persons with acquired brain injury
pursuant to the provisions of this part, title 71, chapter 5, and applicable federal law.
The proposal shall be developed on or before January 15, 2007. The proposal shall be
submitted to the house health and human resources committee and the senate general
welfare, health and human resources committee for comment on or before February 15,
2007. The commissioner of finance and administration shall review any comments from
the general assembly and from the public at large that are received before March 15,
2007, and prepare a final waiver proposal for submission to the department of health
and human services on or before April 15, 2007. If approved by the federal government,
services under the waiver may commence on and after July 1, 2007.

68-55-502. The purpose of this waiver program is to provide services to eligible
participants that seek to improve a participant's ability to perform routine daily living
tasks and to utilize community resources more independently. Daily living skills training
shall include, but not be limited to, training related to personal hygiene, money

management, food preparation, housekeeping and maintenance, and accessing and using community resources.

68-55-503. Persons eligible to participate in this waiver program shall meet all of the following qualifications:

- (a) Be a resident of the state of Tennessee and a citizen of the United States;
- (b) Be eligible for medical assistance pursuant to title 71, chapter 5;
- (c) Be eligible to live in a community-based living facility with priority given to programs developed for persons with brain injuries with supported services provided by trained personnel with brain injury certification;
- (d) Be in need of significant support services;
- (e) Have a documented acquired brain injury as defined by Section 68-55-512 and by rules promulgated by the commissioner of finance and administration;
- (f) Have a significant physical, cognitive, emotional or behavioral impairment as a result of the acquired brain injury; and
- (g) Have attained an age of at least twenty-two (22) but less than sixty-five (65).

68-55-504. The commissioner of finance and administration shall establish a limit on the number of persons who may be served by this waiver in any fiscal year. The waiver authorized by this part does not establish an entitlement to any services to any individual.

68-55-505. The commissioner of finance and administration may establish a program for administering the waiver, including eligibility determinations and supervision

of service providers through contract or interagency agreement with the department of health or such other agency as the commissioner may deem to be appropriate.

68-55-506.

(a) Under the waiver established by this part, the following are allowable services to the extent reimbursable by federal medical assistance funds:

- (1) Adult day care, where available and appropriate for brain injured persons;
- (2) Consumer directed attendant care;
- (3) Interim medical monitoring and treatment;
- (4) Supported community living;
- (5) Prevocational and vocational services;
- (6) Daily living skills training;
- (7) Transportation; and
- (8) Case management.

(b) No direct cash payment is permitted to a waiver participant. All payments for waiver services shall be made directly to the provider of the services.

(c) The services that are considered necessary and appropriate for the waiver participant shall be determined by an interdisciplinary team consisting of the participant, the brain injury Medicaid case manager, the case management service coordinator, and service providers. The commissioner of finance and administration shall establish appropriate rules and policies for interdisciplinary teams.

(d) All waiver participants shall have a service plan developed and reviewed by a certified case manager for the brain injury waiver, in cooperation

with the participant. This plan must be completed prior to the implementation of services. The service plan shall be reviewed by a certified case manager on an annual basis to determine any need for appropriate modifications.

(e) A waiver participant shall access all other services for which the participant is eligible and that are appropriate to meet the needs of the recipient as a precondition of eligibility for waiver services under this part. The waiver may not pay for services under this part when another payer could reasonably have provided and funded such services.

68-55-507. Individuals, or their conservators, may apply to participate in the waiver pursuant to conditions set by rule by the commissioner of finance and administration. The commissioner is authorized to request any information reasonably necessary to establish an individual's eligibility for medical assistance and for services under this waiver. The commissioner is also authorized to establish a waiting list for services should the number of eligible persons exceed the number of slots either funded by the general assembly in the annual appropriations act or authorized by the federal government.

68-55-508. A participant may only receive waiver services from an approved brain injury service provider. A brain injury service provider shall have training regarding or experience with persons who have an acquired brain injury; priority shall be given to service providers that possess a brain injury certification. The commissioner of finance and administration shall establish by rule the qualifications and requirements for a brain injury service provider, brain injury certification, interdisciplinary teams, and certified case managers.

68-55-509. Waiver services provided under this part may not be simultaneously reimbursed with another medical assistance service.

68-55-510. Waiver participants may be eligible for rent subsidies and housing supports if other housing allotments or assistance are not available.

68-55-511. For fiscal year 2007-2008, the total cost of brain injury waiver services may not exceed three thousand one hundred fifty dollars (\$3,150) per month per eligible participant for three hundred (300) slots. In subsequent fiscal years the general assembly shall set the total cost per participant per month in the general appropriations act. In fiscal year 2008-2009, there shall be four hundred (400) slots. In fiscal year 2009-2010, there shall be five hundred (500) slots. In fiscal year 2010-2011, there shall be six hundred (600) slots. In fiscal year 2011-2012, there shall be seven hundred (700) slots. In fiscal year 2012-2013, there shall be eight hundred (800) slots. In fiscal year 2013-2014 and thereafter, there shall be nine hundred (900) slots.

68-55-512. For the purposes of this part,

(1) "Brain injury" or "injury to the brain" means any injury to the brain, regardless of age of onset, whether mechanical or infectious in origin including brain trauma, brain damage and acquired brain injury, the result of which constitutes a substantial impairment to the individual and is expected to continue indefinitely. Brain injury does not include conditions caused by alcoholism, Alzheimer's disease, or a like irreversible dementia; and

(2) "Acquired brain injury" means an acquired injury to the brain by an external physical force that may result in total or partial disability or impairment.

SECTION 2. The commissioner of finance and administration is directed to obtain any necessary waivers, waiver modifications or other approvals necessary from the federal department of health and human services in order to implement the provisions of this act in association with the medical assistance program, including the TennCare program or its successor programs. If the necessary approvals cannot be obtained, then Section 1 of this act

shall not take effect and the remaining provisions of this act shall take effect only to the extent the commissioner determines that such provisions may be implemented without the necessary approvals from the federal government.

SECTION 3. The commissioner of finance and administration is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 4. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. This act shall take effect on July 1, 2006, the public welfare requiring it.